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AUG 23 2004

OFFICE OF PETITIONS

In re Application of :
Carlos De La Huerga :
Application No. 09/247,349 : DECISION ON PETITION
Filed: February 10, 1999 :
Attorney Docket No. 250591.90112 :

This is a decision on the paper styled "CORRECTION OF FILING DATE," filed May 21, 2004, requesting that the above-identified application be accorded a filing date of February 10, 1999. Petitioner states that the initial Filing Receipt for this case indicated that the filing date was February 10, 1999; however, partway through the prosecution of the application the Examiner began to use the incorrect filing date of May 3, 1999.

Application papers in the above-identified application were deposited on February 10, 1999. On March 3, 1999, the Office mailed a "Notice to File Missing Parts of Application - Filing Date Granted," advising applicants that the application papers had been accorded a filing date of February 10, 1999; however, an executed oath or declaration was missing from the application. On May 3, 1999, applicant filed a paper styled "CORRECTION OF FILING RECEIPT," requesting correction of the inventorship pursuant to 1.48(f).

35 U.S.C. 111(a) provides that:

The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

This was the standard for according of a filing date on February 10, 1999. A review of the application file further confirms that, as indicated in the Notice mailed March 3, 1999, the instant application as filed on February 10, 1999 was entitled to a filing date. The record reveals no proper basis for changing the filing date to the date of filing of a declaration correcting inventorship. It is concluded that the Office erred in making the change. The instant application is entitled to a filing date of February 10, 1999, the date on the which the specification and any required drawing were received in the Office.

Accordingly, the petition is GRANTED.

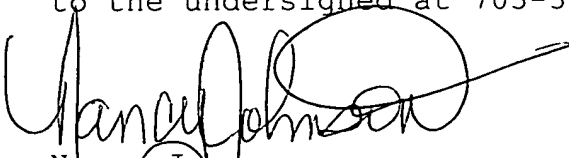
Given the basis for granting the petition, any petition fee is subject to refund.

Receipt of the issue fee is acknowledged. After processing by the Office of Initial Patent Examination (OIPE), the application will be forwarded to the Publishing Division for processing into a patent.

The application is being returned to OIPE for:

- correction of the filing date to February 10, 1999.

Telephone inquiries related to this decision should be directed to the undersigned at 703-305-0309.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions